

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK

CYNTHIA WARMBIER, *individually and as  
personal representative of the Estate of Otto  
Warmbier, et al.*,

Plaintiffs/Judgment Creditors,

-against-

DEMOCRATIC PEOPLE’S REPUBLIC OF  
KOREA,

Defendant/Judgment Debtor.

Case No. 1:21-MC-0021 (LEK/DJS)

**MOTION REQUESTING PERMISSION TO PROVIDE CERTAIN SEALED  
DOCUMENTS TO THE OFFICE OF THE NEW YORK STATE COMPTROLLER**

Plaintiffs/Judgment Creditors Cynthia Warmbier and Frederick Warmbier, individually, and as personal representatives of the Estate of Otto Warmbier (together, the “Judgment Creditors”) request this Court to enter an Order allowing the Plaintiffs to provide the Office of the New York State Comptroller (“Comptroller”) with certain sealed documents, specifically, (i) the Judgment Creditors’ Sealed Memorandum of Law and Declaration in Support of the Request for the Issuance of Writ of Execution, Dkt. No. 7 (the “Sealed Memorandum and Declaration”) and (ii) the Sealed Memorandum-Decision and Order, Dkt. No. 8 (the “Sealed Order,” together with the Sealed Memorandum and Declaration, the “Sealed Documents”). The Judgment Creditors request that the Sealed Documents otherwise remain under seal.

**BACKGROUND**

1. On December 24, 2018, Judgment Creditors obtained a judgment in the amount of \$501,134,683.80 against Defendant Democratic People’s Republic of Korea (“North Korea”)

under section 1605A(c) of the Foreign Sovereign Immunities Act of 1976, 28 U.S.C. § 1610 *et seq.* (the “Judgment”).

2. On March 17, 2021, Judgment Creditors registered the Judgment with this Court. *See* Dkt. No. 1 (Registration of Foreign Judgment).

3. On March 24, 2021, Judgment Creditors submitted to the Court a proposed writ of execution relating to certain assets in the Comptroller’s possession (the “Subject Funds”) and filed a corresponding sealing motion on March 26, 2021. *See* Dkt. Nos. 4 (“Proposed Writ”), 5 (“Motion to Seal”).

4. On March 31, 2021, this Court directed the Judgment Creditors “to file a memorandum of law under seal establishing their entitlement to a writ of execution under § 201(a) of the Terrorism Risk Insurance Act and any other applicable federal or state substantive requirements.” *See* Dkt. No. 6. Accordingly, on April 2, 2021, Judgment Creditors filed the Sealed Memorandum and Declaration. *See* Dkt. No. 7.

5. On April 8, 2021, the Court issued a Memorandum-Decision and Order under seal, finding that Judgment Creditors were entitled to issuance of a writ of execution and, among other things, directing the Clerk of the Court to issue the writ of execution and Judgment Creditors to cause the writ to be served upon the Comptroller as garnishee. *See* Dkt. No. 8.

6. Also on April 8, 2021, the Clerk of the Court issued a writ of execution (the “Writ”) relating to the Subject Funds to partially satisfy the Judgment. *See* Dkt. No. 9.

7. Counsel for the Judgment Creditors was informed by representatives of both the U.S. Marshal Service and the Comptroller that on or about April 21, 2021, the U.S. Marshal Service effected service of the Writ on the Comptroller.

**RELEVANT LAW**

8. “Once a court orders documents before it sealed, the court continues to have authority to enforce its order sealing those documents, as well as authority to loosen or eliminate any restrictions on the sealed documents.” *United States v. Pickard*, 733 F.3d 1297, 1300 (10th Cir. 2013) (citing *Gambale v. Deutsche Bank AG*, 377 F.3d 133, 141 (2d Cir.2004)).

**REQUESTED RELIEF**

9. Judgment Creditors seek permission to provide the Sealed Documents to the Comptroller. As stated in the Judgment Creditors’ Motion to Seal, information provided by the Comptroller and referenced in the Writ and the Sealed Documents is governed by a protective order (the “Protective Order”). *See* Dkt. No. 5, Ex. 3. In fact, the Comptroller is the source of the confidential information that warranted the Sealed Memorandum and Declaration and Sealed Order to be filed under seal in the first instance.

10. Pursuant to Paragraph 8 of the Protective Order, counsel for the Judgment Creditors and the Comptroller may confer and agree in writing that certain confidential information can be filed publicly in a judicial proceeding. *See id.* at ¶ 8 (“Confidential Information that is filed with any court, and any pleadings, motions, exhibits, or other papers filed with the court referencing or containing Confidential Information, shall be filed under seal and kept under seal until further order of the court, unless, however, counsel for Plaintiffs and State Comptroller confer prior to any filing and mutually agree in writing that particular Confidential Information may be filed publicly.”).

11. Providing the Sealed Documents to the Comptroller will allow the Judgment Creditors and the Comptroller to confer on which information contained within the Sealed Documents may be disclosed publicly, including certain information contained therein that may

be used in future filings, and will facilitate discussions between the Judgment Creditors and the Comptroller regarding this action generally.

**CONCLUSION**

12. For the reasons set forth herein, the Judgment Creditors respectfully request that the Court grant them permission to provide copies of the Sealed Documents to the Comptroller.

WHEREFORE, Judgment Creditors respectfully request that the Court:

(A) Enter an order in the form attached hereto as **Exhibit A** allowing Judgment Creditors to share the Sealed Documents with the Comptroller only, and that the Sealed Documents shall otherwise remain under seal; and

(B) Grant such further relief as the Court deems just and proper.

Dated: April 26, 2021

Respectfully submitted,

/s/ Jason H. Cowley

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# EXHIBIT A

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK

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personal representative of the Estate of Otto  
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**ORDER**

For good cause shown, based upon the Judgment Creditors' Motion Requesting Permission To Provide Certain Sealed Documents to the Office of the New York State Comptroller (the "Motion"), it is hereby:

**ORDERED** that the Motion is GRANTED and Judgment Creditors are authorized to share a copy of the Sealed Memorandum of Law and Declaration in Support of the Issuance of Writ of Execution (Dkt. No. 7) and Sealed Memorandum-Decision and Order (Dkt. No. 8) with the Office of the New York State Comptroller only; and that such documents shall otherwise remain sealed.

**IT IS SO ORDERED.**

DATED: April \_\_, 2021  
Albany, New York

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The Honorable Lawrence E. Kahn  
United States District Judge